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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,732	06/09/2005	James Nabors	70065	6067

26748 7590 10/16/2006

SYNGENTA CROP PROTECTION, INC.
PATENT AND TRADEMARK DEPARTMENT
410 SWING ROAD
GREENSBORO, NC 27409

EXAMINER

CLARDY, S

ART UNIT PAPER NUMBER

1617

DATE MAILED: 10/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/517,732	Applicant(s) NABORS ET AL.	
	Examiner S. Mark Clardy	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/05/3/05/12/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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Claims 1-25 are pending in this application which has been filed under 35 USC 371 as the national stage of international application PCT/US03/17486, filed June 4, 2003.

Applicants' claims are drawn to (safened, claim 15) herbicidal compositions comprising the synergistic combination of an acetamide herbicide¹ and a lipophilic component².

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Penner et al (US 6,235,682) and Feucht et al (US 6,365,550).

Penner et al teach compositions comprising a herbicide such as an acetanilide or acetamide herbicide, among others (acetochlor, alachlor, flufenacet, metolachlor; columns 6 and 11, and Table 1) and an oil based adjuvant which enhances the herbicidal activity, such as a free fatty acid (column 5, lines 53-64). The compositions contain an organosilicon containing adjuvant which serves to reduce the foliar retention of the composition so that it does not adhere to desirable crop plants, but controls weeds beneath them.

Feucht et al teach herbicidal compositions comprising flufenacet as the herbicidal agent in combination with glyphosate or glufosinate (abstract) in combination with conventional adjuvants including organic solvents and oil based adjuvants such as xylene, toluene, or

¹ Claim 3: diphenamid, mapropamide, naproanilide, acetochlor, alachlor, butachlor, dimethachlor, dimethenamid(-P), fentrazamide, metazachlor, (S-)metolachlor, pethoxamid, pretilachlor, propachlor, propisochlor, thenylchlor, flufenacet, mefenacet.

² Claim 1: C₁₃₋₂₀ fatty acids or fatty alcohols, hydrocarbon fluids;

Claims 6-11: stearic acid, stearic alcohol, aromatic hydrocarbons, paraffins, iso-paraffins.

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alkylnaphthalenes, aliphatic hydrocarbons such as cyclohexana or paraffins, mineral oil fractions, mineral and vegetable oils, etc. (column 4, lines 21-33).

Thus it would have been prima facie obvious to one of ordinary skill in the art to use the customary oil based adjuvants of Feucht et al with the active agents and fatty acid components of Penner et al in order to obtain the beneficial characteristics of the Penner compositions.

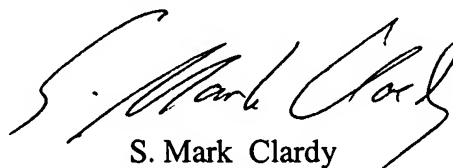
No unobvious or unexpected results are noted; no claim is allowed.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is 571-272-0611. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



S. Mark Clardy
Primary Examiner
Art Unit 1617

June 22, 2006